

March 26, 2019

VIA EMAIL

Chris Saporita, Esq.
Assistant Regional Counsel
United States Environmental Protection Agency – Region 2
290 Broadway
New York, NY 10007

Re: Vo-Toys Superfund Site, Harrison, New Jersey (the “Vo-Toys Site”), Draft Building Assessment Summary Report (BASR) and Draft Administrative Settlement Agreement and Order on Consent (AOC)

Dear Chris:

On behalf of General Electric (GE), we are writing to respond to the March 22, 2019 letter and email from counsel for the Site owners and operators, BRG Harrison Lofts Urban Renewal, LLC (BRG) and the Albanese Entities (collectively, the Albanese Entities)¹ to David Rosoff (EPA’s OSC for this Site) and to you, separately, concerning the draft Building Assessment Summary Report (BASR) and Draft Administrative Settlement Agreement and Order on Consent (ASAOC).

Although GE does not believe it would be productive to engage in a point-by-point rebuttal to the Albanese Entities and their litigation consultant, Gradient, GE finds it necessary to briefly comment upon several unwarranted accusations and to call your attention to a few key facts concerning the BASR.

Among the various assertions in the Albanese Entities’ letter is a request that EPA should require additional investigations, strike Section 6 of the BASR, or direct GE to revise that section, or allow the Albanese Entities the opportunity to suggest line edits to the draft BASR. These requests and the Albanese Entities’ comments appear offered to advance their litigation agenda as opposed to joining in a resolution to remediate the Site. While GE is certainly willing to discuss Gradient’s comments with EPA, the Agency should reject BRG’s extraordinary requests.

First, the Albanese Entities’ and their litigation consultant’s criticisms and assertions regarding GE and its consultant’s investigations at the Site are meritless and based

¹ As explained in our February 14, 2019 letter to Assistant Regional Counsel Michael van Itallie, and the related report from FTI Consulting, regarding operator liabilities, in addition to BRG the Albanese Entities are Albanese Development Corporation, Albanese Organization, Inc., and Albanese Harrison Lofts, LLC. That letter establishes in detail the substantial factual evidence and legal bases for finding those parties liable as CERCLA Section 107 operators of the Site. See 42 U.S.C. § 9607(a)(1) & (2), and *U.S. v. Best Foods*, 524 U.S. 51, 65 (1998) (*citing* 42 U.S.C. § 9607(a)(2)).

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on many factual and technical inaccuracies. As is evident from the high quality of the assessment process and the qualifications of the consultants at Anchor QEA who performed the work, these comments deserve no credence. Moreover, the Albanese Entities' accusations concerning GE's diligent efforts to conduct remedial investigations at this and other sites are false and irrelevant. Frankly, these accusations demonstrate their intention to inflame attitudes and advance their litigation positions rather than working toward a constructive resolution. We are confident in any objective evaluation of the quality of GE's response efforts.

Second, the Albanese Entities' assertions concerning mercury conditions at other properties in Harrison is yet another attempt to inflame attitudes and ignores GE's extensive efforts to investigate and remediate indoor air at local residential properties. GE alone has investigated indoor air quality at dozens of residential properties and installed sub-slab depressurization systems to eliminate indoor air mercury exposures. GE has also committed to long-term monitoring of those systems.

Third, the BASR, which followed approximately four months of field activities, provided a building-by-building assessment, including historical and present-day sources, releases and the extent of contamination found within the buildings. The report's findings are supported by documents, photos and field data that was reported in numerous data tables and figures for each of the buildings. The investigation was entirely consistent with the Work Plan.

Finally, with respect to the draft ASAOC, GE is preparing comments concerning the substantive parts of the draft order that most immediately relate to remedial design of potential remedies. GE is prepared to start that discussion as soon as this Thursday's previously scheduled phone meeting. We are, however, reserving all of our comments regarding other draft provisions, including but not limited to additional and more complete findings of fact, the identification and inclusion as respondents of all responsible parties, the terms of the covenant not to sue, and potential contribution protection.

We also urge EPA to reject the Albanese Entities' numerous proposed revisions casting themselves as "Non-Respondent" owners, while ignoring their statutory strict liability, their current-day operations that led to releases of hazardous substances and their desire to otherwise gain the benefits of the order without performing, funding, or contributing in any meaningful or constructive way.

As EPA knows, the parties are engaged in litigation regarding responsibility for cleanup and other costs for the Site. Respectfully, we request EPA resist the Albanese Entities' invitation to enter the parties' dispute. That said, it is fundamentally important to the remedial process itself that EPA hold all responsible parties, including BRG and the Albanese Entities potentially liable for their roles as owners and operators at the Site and for present day releases of hazardous

Chris Saportia, Assistant Regional Counsel
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substances. We continue to believe the best path forward for the Site, the parties, and the communities lies in a mediated resolution. GE continues to be committed to such an approach in the near term. In the meanwhile, all responsible parties, specifically including the Albanese Entities should immediately be placed on notice concerning their liability and be included in the administrative settlement process.

We wish to point out that nothing in this letter should be deemed a waiver or a limitation upon any of GE's rights, claims, positions, arguments or defenses, all of which are specifically reserved. If GE has not addressed any particular point raised in the Albanese Entities' letter and email, that should not be construed as a concession, or even a comment, on those points.

GE looks forward to meeting with the Agency in the near future to discuss how to proceed. Thank you for your ongoing attention to these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ira M. Gottlieb", written in a cursive style.

Ira M. Gottlieb

cc: Eric Merrifield, Esq.
David Rossoff
Fred Mumford, NJDEP
The Honorable Mayor Fife, Town of Harrison
Mark A. Chertok, Esq.
Dennis M. Toft, Esq.
Maggie Macdonald, Esq.
Cynthia S. Betz, Esq.
(All cc'd above by Email only)